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9 Environmental Research Center, Inc.

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SUPERIOR COURT OF THE STATE OF CALIFORNIA  
COUNTY OF ALAMEDA

ENVIRONMENTAL RESEARCH  
CENTER, INC., a non-profit California  
corporation,

Plaintiff,

vs.

OMEGA PROTEIN CORPORATION,  
WISCONSIN SPECIALTY PROTEIN,  
LLC and DOES 1-25, Inclusive,

Defendants.

) **Case No.: RG16825174**  
) [Judge: Hon. Dennis Hayashi]

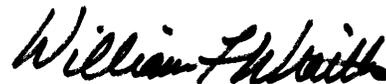
) **NOTICE OF ENTRY OF JUDGMENT**

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

NOTICE IS HEREBY GIVEN that the Court has entered Judgment and approved the settlement by Stipulated Consent Judgment in the above-entitled matter. A true and correct copy of the Stipulated Consent Judgment is attached hereto as Exhibit 1.

Dated: November 15, 2016

WRAITH LAW



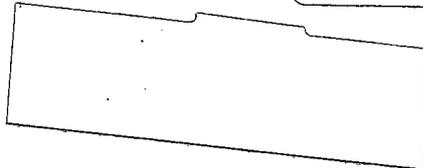
By: \_\_\_\_\_

WILLIAM F. WRAITH

Attorney for Plaintiff

Environmental Research Center, Inc.

# **EXHIBIT 1**



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Attorneys for Defendants  
OMEGA PROTEIN CORPORATION and  
WISCONSIN SPECIALTY PROTEIN, LLC

**SUPERIOR COURT OF THE STATE OF CALIFORNIA  
COUNTY OF ALAMEDA**

ENVIRONMENTAL RESEARCH  
CENTER, INC. a non-profit California  
corporation,

Plaintiff,

v.

OMEGA PROTEIN CORPORATION,  
WISCONSIN SPECIALTY PROTEIN, LLC  
and DOES 1-25, Inclusive

Defendants.

CASE NO. *RG16-825174*

**STIPULATED CONSENT  
JUDGMENT**

Health & Safety Code § 25249.5 *et seq.*

Action Filed:  
Trial Date: None set

**FILED**  
**ALAMEDA COUNTY**  
**NOV 15 2016**  
**CLERK OF THE SUPERIOR COURT**  
By *Danise Hunt*  
Deputy

**1. INTRODUCTION**

1.1 Plaintiff Environmental Research Center, Inc. ("ERC"), a non-profit corporation,  
as a private enforcer, and in the public interest, initiated this action by filing a Complaint for

1 Injunctive Relief and Civil Penalties (the "Complaint") pursuant to the provisions of California  
2 Health and Safety Code section 25249.5 *et seq.* ("Proposition 65"), against OMEGA PROTEIN  
3 CORPORATION and WISCONSIN SPECIALTY PROTEIN, LLC (jointly referred to as  
4 "OMEGA PROTEIN") and DOES 1-25. Although only one of OMEGA PROTEIN  
5 CORPORATION and WISCONSIN SPECIALTY PROTEIN, LLC shall be required to comply  
6 with the requirements of Sections 3 and 4, below, and satisfaction by one of them with those  
7 requirements shall be deemed to be satisfaction by both, both are jointly responsible for ensuring  
8 there is compliance with Sections 3 and 4. In this action, ERC alleges that a number of products  
9 manufactured, distributed or sold by OMEGA PROTEIN contain lead, a chemical listed under  
10 Proposition 65, and that such products require Proposition 65 warnings. These products  
11 (referred to hereinafter individually as a "Covered Product" or collectively as "Covered  
12 Products") are the following:

- 13 • Wisconsin Specialty Protein Tera's Active Nutrition Recovery Blend Casein  
14 & Whey Protein with Coconut Water Fair Trade Certified Dark Chocolate  
15 Cocoa
- 16 • Wisconsin Specialty Protein Tera's Active Nutrition Recovery Blend Casein  
17 & Whey Protein with Coconut Water Bourbon Vanilla
- 18 • Wisconsin Specialty Protein Tera's Mediterranean Healthy Blend Fruit &  
19 Vegetable Blend

20 **1.2** ERC and OMEGA PROTEIN are hereinafter referred to individually as a "Party"  
21 or collectively as the "Parties."

22 **1.3** ERC is a California non-profit corporation dedicated to, among other causes,  
23 helping safeguard the public from health hazards by reducing the use and misuse of hazardous  
24 and toxic chemicals, facilitating a safe environment for consumers and employees, and  
25 encouraging corporate responsibility.

26 **1.4** For purposes of this Consent Judgment, the Parties agree that each defendant is a  
27 business entity each of which has employed ten or more persons at all times relevant to this action,  
28

1 and qualifies as a "person in the course of business" within the meaning of Proposition 65.  
2 OMEGA PROTEIN manufactures, distributes and sells the Covered Products.

3       **1.5** The Complaint is based on allegations contained in ERC's Notice of Violation  
4 dated January 13, 2016, that was served on the California Attorney General, other public  
5 enforcers, and OMEGA PROTEIN ("Notice"). A true and correct copy of the Notice is  
6 attached as Exhibit A and is hereby incorporated by reference. More than 60 days have passed  
7 since the Notice was mailed and uploaded to the Attorney General's website, and no designated  
8 governmental entity has filed a complaint against OMEGA PROTEIN with regard to the  
9 Covered Products or the alleged violations.

10       **1.6** ERC's Notice and Complaint allege that use of the Covered Products exposes  
11 persons in California to lead without first providing clear and reasonable warnings in violation  
12 of California Health and Safety Code section 25249.6. OMEGA PROTEIN denies the claims  
13 asserted in the Notice and the Complaint and denies that the Covered Products require warnings  
14 under Proposition 65.

15       **1.7** The Parties have entered into this Consent Judgment in order to fully resolve all  
16 claims, demands, and allegations asserted in the Notice and the Complaint and for the purpose  
17 of avoiding prolonged litigation. Nothing in this Consent Judgment shall be construed as an  
18 admission of the Parties of any fact, issue of law, or violation of law, nor shall compliance with  
19 this Consent Judgment constitute or be construed as an admission by the Parties of any fact,  
20 issue of law, or violation of law including but not limited to Proposition 65. Nothing in this  
21 Consent Judgment or any document referred to shall be construed as giving rise to any  
22 presumption or inference of admission or concession by the Parties as to any fault, wrongdoing  
23 or liability. This Section 1.7 shall not diminish or otherwise affect the obligations,  
24 responsibilities, and duties of the Parties under this Consent Judgment.

25       **1.8** Except as expressly set forth herein, nothing in this Consent Judgment shall  
26 prejudice, waive, or impair any right, remedy, argument, or defense the Parties may have in any  
27 other or future legal proceeding unrelated to these proceedings.  
28

1           **1.9** The Effective Date of this Consent Judgment is the date on which it is entered as  
2 a Judgment by this Court.

3           **2. JURISDICTION AND VENUE**

4           For purposes of this Consent Judgment and any further court action that may become  
5 necessary to enforce this Consent Judgment, the Parties stipulate that this Court has subject matter  
6 jurisdiction over the allegations of violations contained in the Complaint, personal jurisdiction  
7 over OMEGA PROTEIN as to the acts alleged in the Complaint, that venue is proper in Alameda  
8 County, and that this Court has jurisdiction to enter this Consent Judgment as a full and final  
9 resolution of all claims up through and including the Effective Date which were or could have  
10 been asserted in this action based on the facts alleged in the Notice and Complaint.

11           **3. INJUNCTIVE RELIEF, REFORMULATION, TESTING AND WARNINGS**

12           **3.1** On and after the date that is ninety (90) days after the Effective Date  
13 (“Compliance Date”), OMEGA PROTEIN shall not manufacture for sale in the State of  
14 California, “Distribute into the State of California”, or directly sell in the State of California,  
15 any Covered Product that does not qualify as a Reformulated Covered Product under Section  
16 3.3, unless such Covered Product complies with the warning requirements under of Section 3.2.

17           **3.1.1** As used in this Consent Judgment, the term “Distribute into the State of  
18 California” shall mean to directly ship a Covered Product into California for sale in California  
19 or to sell a Covered Product to a distributor that OMEGA PROTEIN knows will sell the  
20 Covered Product in California.

21           **3.1.2** For purposes of this Consent Judgment, the “Daily Lead Level” shall be  
22 measured in micrograms, and shall be calculated using the following formula: micrograms of  
23 lead per gram of product, multiplied by grams of product per serving of the product (using the  
24 largest serving size appearing on the product label), multiplied by servings of the product per  
25 day (using the largest number of servings in a recommended dosage appearing on the product  
26 label), which equals micrograms of lead exposure per day.

1           **3.2 Clear and Reasonable Warnings**

2           For those Covered Products that are subject to the warning requirement, OMEGA  
3 PROTEIN shall provide the following warning (“Warning”) as specified below:

4           **WARNING: This product contains a chemical known to the State of California to**  
5           **cause [cancer and] birth defects or other reproductive harm.**

6           The phrase “cancer and” must be included in the Warning only if the maximum recommended daily  
7 dose causes an exposure to more than 15 micrograms of lead when taken as directed on the Covered  
8 Product’s label. The Warning shall be prominent and displayed securely on either the cap, the unit  
9 packaging, or by a sticker securely affixed to the Covered Products with such conspicuousness, as  
10 compared with other words, statements, or designs so as to render it likely to be read and understood  
11 by an ordinary individual purchasing or using the Covered Products. The Warning appearing on the  
12 label or container shall be at least the same size as the largest of any other health or safety warnings  
13 correspondingly appearing on the label or container, as applicable, or such product, and the word  
14 “**WARNING**” shall be in capital letters and in bold print. No other statements discussing  
15 Proposition 65 or lead may be stated on the Covered Product or on the unit packaging of the  
16 Covered Product.

17           **3.3 Reformulated Covered Products**

18           **3.3.1** A Reformulated Covered Product is one for which the Daily Lead Level  
19 contains no more than 0.5 micrograms of lead per day after subtracting the amount of lead deemed  
20 to be “naturally occurring” for each ingredient listed in Table 3.3.3 below.

21           **3.3.2** The amount of lead deemed “naturally occurring” in each of the Covered  
22 Products is the sum of the amounts of “naturally occurring” lead supplied by the quantity of each  
23 ingredient listed in Table 3.3.3 that is present in each Covered Product. For each ingredient listed  
24 in Table 3.3.3, the amount of lead deemed “naturally occurring” is listed in Table 3.3.3 in  
25 micrograms of “naturally occurring” lead per gram of the ingredient that is contained in the  
26 Covered Product.

27           **3.3.3** If OMEGA PROTEIN seeks to utilize the allowances provided in Table  
28 3.3.3 it must, prior to its first distribution or sale of Covered Products after the Compliance Date,

1 provide to ERC the percentage of each ingredient in each of the Covered Products subject to  
2 confidentiality.

3 **Table 3.3.3**

<b>Ingredient</b>	<b>Amount of lead per gram of ingredient deemed naturally occurring</b>
Calcium (elemental)	0.8 micrograms
Ferrous Fumurate	0.4 micrograms
Zinc Oxide	8.0 micrograms
Magnesium Oxide	0.4 micrograms
Magnesium Carbonate	0.332 micrograms
Zinc Gluconate	0.8 micrograms
Potassium Chloride	1.0 micrograms
Cocoa Powder	1.0 micrograms

12 **3.4 Testing and Quality Control Methodology**

13 **3.4.1** OMEGA PROTEIN shall arrange, for at least three (3) consecutive years  
14 and at least once per year, commencing one year from the Effective Date, for the lead testing of  
15 three (3) randomly-selected samples of three (3) separate lots each year for each Covered  
16 Product to be Distributed into the State of California, or directly sold in the State of California,  
17 by OMEGA PROTEIN. OMEGA PROTEIN shall test samples in the form intended for the end-  
18 user to be distributed or sold to California consumers. The testing requirements of this Section  
19 3.4.1 do not apply to any of the Covered Products for which OMEGA PROTEIN has provided  
20 the Warning specified in Section 3.2.

21 **3.4.2** Testing shall be performed by an independent third-party laboratory  
22 certified by the California Environmental Laboratory Accreditation Program or an independent  
23 third-party laboratory that is registered with the United States Food & Drug Administration.  
24 Testing for lead shall be performed using Inductively Coupled Plasma-Mass Spectrometry (ICP-  
25 MS) achieving a limit of quantification of less than or equal to 0.010 mg/kg or any other testing  
26 method agreed upon in writing by the Parties. Nothing in this Consent Judgment shall limit  
27 OMEGA PROTEIN's ability to conduct or require that others conduct additional testing of the  
28 Covered Products, including raw materials used in their manufacture.

1                   **3.4.3** OMEGA PROTEIN shall retain copies of its test data under Section 3.4  
2 for a period of at least three (3) years of the date of the test. Upon fifteen (15) days of receipt of  
3 a written request by ERC, OMEGA PROTEIN shall provide ERC with testing reports for testing  
4 undertaken pursuant to this Consent Judgment.

5       **4. SETTLEMENT PAYMENT**

6           **4.1** In full satisfaction of all potential civil penalties, payment in lieu of civil  
7 penalties, attorney's fees, and costs, OMEGA PROTEIN shall make a total payment of \$72,000  
8 ("Total Settlement Amount") to ERC within 5 days of the Effective Date. OMEGA PROTEIN  
9 shall make this payment by wire transfer to ERC's escrow account, for which ERC will give  
10 OMEGA PROTEIN the necessary account information. The Total Settlement Amount shall be  
11 apportioned as follows:

12           **4.2** \$22,996.00 shall be considered a civil penalty pursuant to California Health and  
13 Safety Code §25249.7(b)(1). ERC shall remit 75% (\$17,247.00) of the civil penalty to the  
14 Office of Environmental Health Hazard Assessment ("OEHHA") for deposit in the Safe  
15 Drinking Water and Toxic Enforcement Fund in accordance with California Health and Safety  
16 Code §25249.12(c). ERC will retain the remaining 25% (\$5,749.00) of the civil penalty.

17           **4.3** \$2,885.06 shall be distributed to ERC as reimbursement to ERC for reasonable  
18 costs incurred in bringing this action.

19           **4.4** \$22,998.17 shall be distributed to ERC in lieu of further civil penalties, for the  
20 day-to-day business activities such as (1) continued enforcement of Proposition 65, which  
21 includes work, analyzing, researching and testing consumer products that may contain  
22 Proposition 65 chemicals, focusing on the same or similar type of ingestible products that are  
23 the subject matter of the current action; (2) the continued monitoring of past consent judgments  
24 and settlements to ensure companies are in compliance with Proposition 65; and (3) giving a  
25 donation of \$1,150.00 to the As You Sow to address reducing toxic chemical exposures in  
26 California.

27           **4.5** \$8,785.00 shall be distributed to William F. Wraith as reimbursement of ERC's  
28 attorney's fees, while \$14,335.77 shall be distributed to ERC for its in-house legal fees.

1           **4.6**     In the event that OMEGA PROTEIN fails to remit the Total Settlement Payment  
2 owed under Section 4 of this Consent Judgment on or before the due date, OMEGA PROTEIN  
3 shall be deemed to be in material breach of its obligations under this Consent Judgment. ERC  
4 shall provide written notice of the delinquency to OMEGA PROTEIN via electronic mail. If  
5 OMEGA PROTEIN fails to deliver the Total Settlement Payment within five (5) days from the  
6 written notice, the Total Settlement Payment shall become immediately due and payable and  
7 shall accrue interest at the statutory judgment interest rate provided in the Code of Civil  
8 Procedure section 685.010. Additionally, OMEGA PROTEIN agrees to pay ERC's reasonable  
9 attorney's fees and costs for any efforts to collect the payment due under this Consent  
10 Judgment in the event that OMEGA PROTEIN fails to make timely payment pursuant to  
11 Section 4.1.

12           **5.    MODIFICATION OF CONSENT JUDGMENT**

13           **5.1**     This Consent Judgment may be modified only as to injunctive terms (i) by  
14 written stipulation of the Parties or pursuant to Section 5.4 and (ii) upon entry by the Court of a  
15 modified consent judgment.

16           **5.2**     If OMEGA PROTEIN seeks to modify this Consent Judgment under Section 5.1,  
17 then OMEGA PROTEIN must provide written notice to ERC of its intent ("Notice of Intent").  
18 If ERC seeks to meet and confer regarding the proposed modification in the Notice of Intent,  
19 then ERC must provide written notice to OMEGA PROTEIN within thirty days of receiving the  
20 Notice of Intent. If ERC notifies OMEGA PROTEIN in a timely manner of ERC's intent to  
21 meet and confer, then the Parties shall meet and confer in good faith as required in this Section.  
22 The Parties shall meet in person or via telephone within thirty (30) days of ERC's notification  
23 of its intent to meet and confer. Within thirty days of such meeting, if ERC disputes the  
24 proposed modification, ERC shall provide to OMEGA PROTEIN a written basis for its  
25 position. The Parties shall continue to meet and confer for an additional thirty (30) days in an  
26 effort to resolve any remaining disputes. Should it become necessary, the Parties may agree in  
27 writing to different deadlines for the meet-and-confer period.  
28

1           **5.3**     In the event that OMEGA PROTEIN initiates or otherwise requests a  
2 modification under Section 5.1, and the meet and confer process leads to a joint motion or  
3 application of the Consent Judgment, OMEGA PROTEIN shall reimburse ERC its costs and  
4 reasonable attorney's fees for the time spent in the meet-and-confer process and filing and  
5 arguing the motion or application.

6           **5.4**     Where the meet-and-confer process does not lead to a joint motion or  
7 application in support of a modification of the Consent Judgment, then either Party may seek  
8 judicial relief on its own.

9           **6.     RETENTION OF JURISDICTION, ENFORCEMENT OF CONSENT**  
10           **JUDGMENT**

11           **6.1**     This Court shall retain jurisdiction of this matter to enforce, modify or terminate  
12 this Consent Judgment.

13           **6.2**     If ERC alleges that any Covered Product fails to qualify as a Reformulated  
14 Covered Product (for which ERC alleges that no Warning has been provided), then ERC shall  
15 inform OMEGA PROTEIN in a reasonably prompt manner of its test results, including  
16 information sufficient to permit OMEGA PROTEIN to identify the Covered Products at issue.  
17 OMEGA PROTEIN shall, within thirty days following such notice, provide ERC with testing  
18 information, from an independent third-party laboratory meeting the requirements of Sections  
19 3.4.2, demonstrating OMEGA PROTEIN's compliance with the Consent Judgment, if  
20 warranted. The Parties shall first attempt to resolve the matter prior to ERC taking any further  
21 legal action.

22           **7.     BINDING EFFECT, CLAIMS COVERED AND RELEASED**

23           **7.1**     This Consent Judgment is a full, final, and binding resolution between ERC, on  
24 behalf of itself and in the public interest, and OMEGA PROTEIN, of any alleged violation of  
25 Proposition 65 for failure to provide Proposition 65 warnings of exposure to lead from the  
26 handling, use or consumption of the Covered Products up through and including the Compliance  
27 Date. ERC, on behalf of the general public in the public interest and on behalf of itself and its  
28 respective owners, principals, shareholders, officers, directors, employees, agents, parents,

1 subsidiaries, successors, assigns, and legal representatives (collectively referred to as “ERC  
2 Releasers”) fully releases and discharges (i) OMEGA PROTEIN CORPORATION and  
3 WISCONSIN SPECIALTY PROTEIN, LLC, and their parent companies, affiliates under  
4 common ownership, subsidiaries, shareholders, directors, members, managers, officers, owners,  
5 and employees (collectively referred to as “Omega Protein Releasers”) and (ii) each of their  
6 respective customers, distributors, wholesalers, retailers, and all entities in the stream of  
7 commerce, and (iii) the predecessors, successors, and assigns of any of them (the entities referred  
8 to in subsections (i) through (iii) are referred to as “Releasees”) from all claims, actions, suits,  
9 demands, liabilities, damages, penalties, fees, costs, and expenses (collectively referred to as  
10 “Claims”) that were asserted, or that could have been asserted, for any alleged violations of  
11 Proposition 65 arising from alleged exposures to lead in the Covered Products manufactured,  
12 distributed, or sold by OMEGA PROTEIN before the Compliance Date.

13       **7.2** ERC, on behalf of itself and the ERC Releasers, and not on behalf of the general  
14 public, hereby releases and discharges the Releasees from any and all Claims that were asserted,  
15 or that could have been asserted, for any alleged violations of any other statutory or common  
16 law, arising from alleged exposures to lead in the Covered Products manufactured, distributed, or  
17 sold by Omega Protein before the Compliance Date.

18       **7.3** ERC on behalf of itself and the ERC Releasers, on the one hand, and OMEGA  
19 PROTEIN on behalf of itself and the Omega Protein Releasers, on the other hand, waive and  
20 release any and all Claims they may have against each other for all actions or statements made or  
21 undertaken in the course of seeking or opposing enforcement of Proposition 65 in connection  
22 with the Notice. However, this shall not affect or limit any Party’s right to seek to enforce the  
23 terms of this Consent Judgment.

24       **7.4** It is possible that other Claims not known to the Parties arising out of the facts  
25 alleged in the Notice and relating to the Covered Products will develop or be discovered. ERC  
26 on behalf of itself and the ERC Releasers, on the one hand, and OMEGA PROTEIN, on behalf  
27 of itself and the Omega Protein Releasers, on the other hand, acknowledge that this Consent  
28 Judgment is expressly intended to cover and include all such claims up through and including the

1 Compliance Date, including all rights of action therefore, and further acknowledge that the  
2 claims released this section may include unknown claims, and nevertheless waive California  
3 Civil Code section 1542 as to any such unknown claims. California Civil Code section 1542  
4 reads as follows:

5 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE  
6 CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER  
7 FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF  
8 KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS  
9 OR HER SETTLEMENT WITH THE DEBTOR.

8 ERC on behalf of itself only, on the one hand, and OMEGA PROTEIN, on the other hand,  
9 acknowledge and understand the significance and consequences of this specific waiver of  
10 California Civil Code section 1542.

11 7.5 Nothing in this Release is intended to apply to any occupational or environmental  
12 exposures arising under Proposition 65. Compliance with the terms of this Consent Judgment  
13 shall constitute compliance by any Releasee with Proposition 65 regarding alleged consumer  
14 exposures to lead in the Covered Products as set forth in the Notice.

15 **8. SEVERABILITY OF UNENFORCEABLE PROVISIONS**

16 In the event that any of the provisions of this Consent Judgment are held by a court to be  
17 unenforceable, the validity of the remaining enforceable provisions shall not be adversely affected.

18 **9. GOVERNING LAW**

19 The terms and conditions of this Consent Judgment shall be governed by and construed in  
20 accordance with the laws of the State of California.

21 **10. PROVISION OF NOTICE**

22 All notices required to be given to either Party to this Consent Judgment by the other shall  
23 be in writing and sent to the following agents listed below via first-class mail. Courtesy copies via  
24 email may also be sent.

25 **FOR ENVIRONMENTAL RESEARCH CENTER, INC.:**

26 Chris Heptinstall, Executive Director, Environmental Research Center  
27 3111 Camino Del Rio North, Suite 400  
28 San Diego, CA 92108  
Tel: (619) 500-3090

1 Email: chris\_erc501c3@yahoo.com

2 With a copy to:  
3 WILLIAM F. WRAITH  
4 WRAITH LAW  
5 24422 Avenida de la Carlota, Suite 400  
6 Laguna Hills, CA 92653  
7 Tel: (949) 452-1234  
8 Fax: (949) 452-1102

9 **OMEGA PROTEIN CORPORATION and**  
10 **WISCONSIN SPECIALTY PROTEIN, LLC**

11 John Held  
12 Executive Vice President, General Counsel, and Secretary  
13 Omega Protein Corporation  
14 2105 City West Boulevard Suite 500  
15 Houston, TX 77042-2838

16 With a copy to:  
17 TRENTON H. NORRIS  
18 SARAH ESMAILI  
19 ARNOLD & PORTER LLP  
20 Three Embarcadero Center, 10th Floor  
21 San Francisco, California 94111-4024  
22 Telephone: (415) 471-3100  
23 Facsimile: (415) 415-3400  
24 Email: trent.norris@aporter.com  
25 sarah.esmaili@aporter.com

26 **11. COURT APPROVAL**

27 **11.1** Upon execution of this Consent Judgment by the Parties, ERC shall notice a  
28 Motion for Court Approval. The Parties shall use their best efforts to support entry of this  
Consent Judgment.

**11.2** If the California Attorney General objects to any term in this Consent Judgment,  
the Parties shall use their best efforts to resolve the concern in a timely manner, and if possible  
prior to the hearing on the motion.

**11.3** If this Stipulated Consent Judgment is not approved by the Court, it shall be  
void and have no force or effect.

1     **12. EXECUTION AND COUNTERPARTS**

2             This Consent Judgment may be executed in counterparts, which taken together shall be  
3 deemed to constitute one document. A facsimile or .pdf signature shall be construed as valid as  
4 the original signature.

5     **13. DRAFTING**

6             The terms of this Consent Judgment have been reviewed by the respective counsel for each  
7 Party prior to its signing, and each Party has had an opportunity to fully discuss the terms and  
8 conditions with legal counsel. The Parties agree that, in any subsequent interpretation and  
9 construction of this Consent Judgment, no inference, assumption, or presumption shall be drawn,  
10 and no provision of this Consent Judgment shall be construed against any Party, based on the fact  
11 that one of the Parties and/or one of the Parties' legal counsel prepared and/or drafted all or any  
12 portion of the Consent Judgment. It is conclusively presumed that all of the Parties participated  
13 equally in the preparation and drafting of this Consent Judgment.

14     **14. GOOD FAITH ATTEMPT TO RESOLVE DISPUTES**

15             If a dispute arises with respect to either Party's compliance with the terms of this Consent  
16 Judgment entered by the Court, the Parties shall meet and confer in person, by telephone, and/or in  
17 writing and endeavor to resolve the dispute in an amicable manner. No action or motion may be  
18 filed in the absence of such a good faith attempt to resolve the dispute beforehand.

19     **15. ENFORCEMENT**

20             ERC may, by motion or order to show cause before the Superior Court of Alameda  
21 County, enforce the terms and conditions contained in this Consent Judgment. In any action  
22 brought by ERC to enforce this Consent Judgment, ERC may seek whatever fines, costs,  
23 penalties, or remedies as are provided by law for failure to comply with the Consent Judgment.  
24 To the extent the failure to comply with the Consent Judgment constitutes a violation of  
25 Proposition 65 or other laws, ERC shall not be limited to enforcement of this Consent Judgment,  
26 but may seek in another action whatever fines, costs, penalties, or remedies as are provided by  
27 law for failure to comply with Proposition 65 or other laws.

28

1 **16. ENTIRE AGREEMENT, AUTHORIZATION**

2 **16.1** This Consent Judgment contains the sole and entire agreement and  
3 understanding of the Parties with respect to the entire subject matter herein, and any and all  
4 prior discussions, negotiations, commitments and understandings related hereto. No  
5 representations, oral or otherwise, express or implied, other than those contained herein have  
6 been made by any Party. No other agreements, oral or otherwise, unless specifically referred to  
7 herein, shall be deemed to exist or to bind any Party.

8 **16.2** Each signatory to this Consent Judgment certifies that he or she is fully  
9 authorized by the Party he or she represents to stipulate to this Consent Judgment. Except as  
10 explicitly provided herein, each Party shall bear its own fees and costs.

11 **17. REQUEST FOR FINDINGS, APPROVAL OF SETTLEMENT AND ENTRY OF**  
12 **CONSENT JUDGMENT**

13 This Consent Judgment has come before the Court upon the request of the Parties. The  
14 Parties request the Court to fully review this Consent Judgment and, being fully informed  
15 regarding the matters which are the subject of this action, to:

16 (1) Find that the terms and provisions of this Consent Judgment represent a fair and  
17 equitable settlement of all matters raised by the allegations of the Complaint, that the matter has  
18 been diligently prosecuted, and that the public interest is served by such settlement; and

19 (2) Make the findings pursuant to California Health and Safety Code section  
20 25249.7(f)(4), approve the Settlement, and approve this Consent Judgment.

21

22 **IT IS SO STIPULATED:**

23

24 Dated: 7/26/, 2016

25

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28

ENVIRONMENTAL RESEARCH  
CENTER, INC.

By:   
Chris H. [unclear], Executive Director

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Dated: 7/26/16, 2016

OMEGA PROTEIN CORPORATION

*John Held*

By: John Held  
Its: Executive Vice President, General Counsel, and Secretary

Dated: 7/26/16, 2016

WISCONSIN SPECIALTY PROTEIN, LLC

*John Held*

By: John Held  
Its: Vice President

**APPROVED AS TO FORM:**

Dated: 7/26/16, 2016

WRAITH LAW

By: *William F. Wraith*

William F. Wraith  
Attorney for Plaintiff Environmental Research Center, Inc.

Dated: 7/26/16, 2016

ARNOLD & PORTER LLP

By: *Sarah Esmail*

Trenton H. Norris  
Sarah Esmail  
Attorney for Defendants Omega Protein Corporation and Wisconsin Specialty Protein, LLC

**ORDER AND JUDGMENT**

Based upon the Parties' Stipulation, and good cause appearing, this Consent Judgment is approved and Judgment is hereby entered according to its terms.

IT IS SO ORDERED, ADJUDGED AND DECREED.

Dated: *November 14* 2016

*D. J. [Signature]*  
Judge of the Superior Court

**EXHIBIT A**

# **WRAITH LAW**

24422 AVENIDA DE LA CARLOTA  
SUITE 400  
LAGUNA HILLS, CA 92653  
Tel (949) 452-1234  
Fax (949) 452-1102

January 13, 2016

## **NOTICE OF VIOLATIONS OF CALIFORNIA HEALTH & SAFETY CODE SECTION 25249.5 *ET SEQ.* (PROPOSITION 65)**

Dear Alleged Violators and the Appropriate Public Enforcement Agencies:

I represent Environmental Research Center, Inc. ("ERC"), 3111 Camino Del Rio North, Suite 400, San Diego, CA 92108; Tel. (619) 500-3090. ERC's Executive Director is Chris Heptinstall. ERC is a California non-profit corporation dedicated to, among other causes, helping safeguard the public from health hazards by bringing about a reduction in the use and misuse of hazardous and toxic chemicals, facilitating a safe environment for consumers and employees, and encouraging corporate responsibility.

ERC has identified violations of California's Safe Drinking Water and Toxic Enforcement Act of 1986 ("Proposition 65"), which is codified at California Health & Safety Code §25249.5 *et seq.*, with respect to the products identified below. These violations have occurred and continue to occur because the alleged Violators identified below failed to provide required clear and reasonable warnings with these products. This letter serves as a notice of these violations to the alleged Violators and the appropriate public enforcement agencies. Pursuant to Section 25249.7(d) of the statute, ERC intends to file a private enforcement action in the public interest 60 days after effective service of this notice unless the public enforcement agencies have commenced and are diligently prosecuting an action to rectify these violations.

**General Information about Proposition 65.** A copy of a summary of Proposition 65, prepared by the Office of Environmental Health Hazard Assessment, is attached with the copy of this letter served to the alleged Violators identified below.

**Alleged Violators.** The names of the companies covered by this notice that violated Proposition 65 (hereinafter the "Violators") are:

**Omega Protein Corporation  
Wisconsin Specialty Protein, LLC**

**Consumer Products and Listed Chemical.** The products that are the subject of this notice and the chemical in those products identified as exceeding allowable levels are:

- **Wisconsin Specialty Protein Tera's Active Nutrition Recovery Blend Casein & Whey Protein with Coconut Water Fair Trade Certified Dark Chocolate Cocoa – Lead**
- **Wisconsin Specialty Protein Tera's Active Nutrition Recovery Blend Casein & Whey Protein with Coconut Water Bourbon Vanilla - Lead**
- **Wisconsin Specialty Protein Tera's Mediterranean Healthy Blend Fruit & Vegetable Blend - Lead**

On February 27, 1987, the State of California officially listed lead as a chemical known to cause developmental toxicity, and male and female reproductive toxicity. On October 1, 1992, the State of California officially listed lead and lead compounds as chemicals known to cause cancer.

It should be noted that ERC may continue to investigate other products that may reveal further violations and result in subsequent notices of violations.

**Route of Exposure.** The consumer exposures that are the subject of this notice result from the purchase, acquisition, handling and recommended use of these products. Consequently, the primary route of exposure to this chemical has been and continues to be through ingestion, but may have also occurred and may continue to occur through inhalation and/or dermal contact.

**Approximate Time Period of Violations.** Ongoing violations have occurred every day since at least January 13, 2013, as well as every day since the products were introduced into the California marketplace, and will continue every day until clear and reasonable warnings are provided to product purchasers and users or until this known toxic chemical is either removed from or reduced to allowable levels in the products. Proposition 65 requires that a clear and reasonable warning be provided prior to exposure to the identified chemical. The method of warning should be a warning that appears on the product label. The Violators violated Proposition 65 because they failed to provide persons handling and/or using these products with appropriate warnings that they are being exposed to this chemical.

Consistent with the public interest goals of Proposition 65 and a desire to have these ongoing violations of California law quickly rectified, ERC is interested in seeking a constructive resolution of this matter that includes an enforceable written agreement by the Violators to: (1) reformulate the identified products so as to eliminate further exposures to the identified chemical, or provide appropriate warnings on the labels of these products; (2) pay an appropriate civil penalty; and (3) provide clear and reasonable warnings compliant with Proposition 65 to all persons located in California who purchased the above products in the last three years. Such a resolution will prevent further unwarned consumer exposures to the identified chemical, as well as an expensive and time consuming litigation.

ERC has retained me as legal counsel in connection with this matter. **Please direct all communications regarding this Notice of Violations to my attention at the law office address and telephone number indicated on the letterhead.**

Sincerely,



---

William F. Wraith

**Attachments**

Certificate of Merit

Certificate of Service

OEHHA Summary (to Omega Protein Corporation, Wisconsin Specialty Protein, LLC and their Registered Agents for Service of Process only)

Additional Supporting Information for Certificate of Merit (to AG only)

**CERTIFICATE OF MERIT**

**Re: Environmental Research Center, Inc.'s Notice of Proposition 65 Violations by  
Omega Protein Corporation and Wisconsin Specialty Protein, LLC**

I, William F. Wraith, declare:

1. This Certificate of Merit accompanies the attached 60-day notice in which it is alleged the parties identified in the notice violated California Health & Safety Code Section 25249.6 by failing to provide clear and reasonable warnings.

2. I am an attorney for the noticing party.

3. I have consulted with one or more persons with relevant and appropriate experience or expertise who have reviewed facts, studies, or other data regarding the exposure to the listed chemical that is the subject of the notice.

4. Based on the information obtained through those consultants, and on other information in my possession, I believe there is a reasonable and meritorious case for the private action. I understand that "reasonable and meritorious case for the private action" means that the information provides a credible basis that all elements of the plaintiff's case can be established and that the information did not prove that the alleged Violators will be able to establish any of the affirmative defenses set forth in the statute.

5. Along with the copy of this Certificate of Merit served on the Attorney General is attached additional factual information sufficient to establish the basis for this certificate, including the information identified in California Health & Safety Code §25249.7(h)(2), i.e., (1) the identity of the persons consulted with and relied on by the certifier, and (2) the facts, studies, or other data reviewed by those persons.

Dated: January 13, 2016



---

William F. Wraith

**CERTIFICATE OF SERVICE**

I, the undersigned, declare under penalty of perjury under the laws of the State of California that the following is true and correct:

I am a citizen of the United States, over the age of 18 years of age, and am not a party to the within entitled action. My business address is 306 Joy Street, Fort Oglethorpe, Georgia 30742. I am a resident or employed in the county where the mailing occurred. The envelope or package was placed in the mail at Fort Oglethorpe, Georgia.

On January 13, 2016, I served the following documents: **NOTICE OF VIOLATIONS OF CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT; "THE SAFE DRINKING WATER AND TOXIC ENFORCEMENT ACT OF 1986 (PROPOSITION 65): A SUMMARY"** on the following parties by placing a true and correct copy thereof in a sealed envelope, addressed to the party listed below and depositing it at a U.S. Postal Service Office with the postage fully prepaid for delivery by Certified Mail:

Current President or CEO  
Omega Protein Corporation  
2105 Citywest Boulevard, Suite  
500  
Houston, TX 77042

CT Corporation System  
(Omega Protein Corporation's Registered  
Agent for Service of Process)  
1999 Bryan Street, Suite 900  
Dallas, TX 75201

Current President or CEO  
Omega Protein Corporation  
350 North Saint Paul Street  
Dallas, TX 75201

The Corporation Trust Company of  
Nevada  
(Omega Protein Corporation's Registered  
Agent for Service of Process)  
701 South Carson Street, Suite 200  
Carson City, NV 89701

Current President or CEO  
Wisconsin Specialty Protein, LLC  
222 West Washington Avenue,  
Suite 250  
Madison, WI 53703

CT Corporation System  
(Wisconsin Specialty Protein, LLC's  
Registered Agent for Service of Process)  
8020 Excelsior Drive, Suite 200  
Madison, WI 53717

Current President or CEO  
Wisconsin Specialty Protein, LLC  
522 Greenway Court  
Reedsburg, WI 53959

On January 13, 2016, I verified the following documents **NOTICE OF VIOLATIONS, CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT; ADDITIONAL SUPPORTING INFORMATION FOR CERTIFICATE OF MERIT AS REQUIRED BY CALIFORNIA HEALTH & SAFETY CODE §25249.7(d)(1)** were served on the following party when a true and correct copy thereof was uploaded on the California Attorney General's website, which can be accessed at <https://oag.ca.gov/prop65/add-60-day-notice> :

Office of the California Attorney General  
Prop 65 Enforcement Reporting  
1515 Clay Street, Suite 2000  
Oakland, CA 94612-0550

On January 13, 2016, I verified the following documents **NOTICE OF VIOLATIONS, CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT** were served on the following parties when a true and correct copy thereof was sent via electronic mail to the party listed below:

Notice of Violations of California Health & Safety Code §25249.5 *et seq.*

January 13, 2016

Page 5

Stacey Grassini, Deputy District Attorney  
Contra Costa County  
900 Ward Street  
Martinez, CA 94553  
sgrassini@contracostada.org

Michelle Latimer, Program Coordinator  
Lassen County  
220 S. Lassen Street  
Susanville, CA 96130  
mlatimer@co.lassen.ca.us

Dije Ndreu, Deputy District Attorney  
Monterey County  
1200 Aguajito Road  
Monterey, CA 93940  
Prop65DA@co.monterey.ca.us

Gary Lieberstein, District Attorney  
Napa County  
931 Parkway Mall  
Napa, CA 94559  
CEPD@countyofnapa.org

Paul E. Zellerbach, District Attorney  
Riverside County  
3072 Orange Street  
Riverside, CA 92501  
Prop65@rivcoda.org

Anne Marie Schubert, District Attorney  
Sacramento County  
901 G Street  
Sacramento, CA 95814  
Prop65@sacda.org

Gregory Alker, Assistant District Attorney  
San Francisco County  
732 Brannan Street  
San Francisco, CA 94103  
gregory.alker@sfgov.org

Yen Dang, Supervising Deputy District Attorney  
Santa Clara County  
70 W Hedding St  
San Jose, CA 95110  
EPU@da.sccgov.org

Stephan R. Passalacqua, District Attorney  
Sonoma County  
600 Administration Dr  
Sonoma, CA 95403  
jbarnes@sonoma-county.org

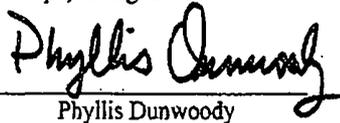
Phillip J. Cline, District Attorney  
Tulare County  
221 S Mooney Blvd  
Visalia, CA 95370  
Prop65@co.tulare.ca.us

Gregory D. Totten, District Attorney  
Ventura County  
800 S Victoria Ave  
Ventura, CA 93009  
daspecialops@ventura.org

Jeff W. Reisig, District Attorney  
Yolo County  
301 Second Street  
Woodland, CA 95695  
cfepd@yolocounty.org

On January 13, 2016, I served the following documents: **NOTICE OF VIOLATIONS, CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.**; **CERTIFICATE OF MERIT** on each of the parties on the Service List attached hereto by placing a true and correct copy thereof in a sealed envelope, addressed to each of the parties on the Service List attached hereto, and depositing it at a U.S. Postal Service Office with the postage fully prepaid for delivery by Priority Mail.

Executed on January 13, 2016, in Fort Oglethorpe, Georgia.

  
Phyllis Dunwoody

Notice of Violations of California Health & Safety Code §25249.5 et seq.

January 13, 2016

Page 6

Service List

District Attorney, Alameda County 1225 Fallon Street, Suite 900 Oakland, CA 94612	District Attorney, Lake County 255 N. Forbes Street Lakeport, CA 95453	District Attorney, San Diego County 330 West Broadway, Suite 1300 San Diego, CA 92101	Los Angeles City Attorney's Office City Hall East 200 N. Main Street, Suite 800 Los Angeles, CA 90012
District Attorney, Alpine County P.O. Box 248 Markleeville, CA 96120	District Attorney, Los Angeles County 210 West Temple Street, Suite 18000 Los Angeles, CA 90012	District Attorney, San Joaquin County 222 E. Weber Ave. Rm. 202 Stockton, CA 95202	San Diego City Attorney's Office 1200 3rd Avenue, Ste 1620 San Diego, CA 92101
District Attorney, Amador County 708 Court Street Jackson, CA 95642	District Attorney, Madera County 209 West Yosemite Avenue Madera, CA 93637	District Attorney, San Luis Obispo County 1035 Palm St, Room 450 San Luis Obispo, CA 93408	San Francisco, City Attorney City Hall, Room 234 1 Dr Carlton B Goodlett PL San Francisco, CA 94102
District Attorney, Butte County 25 County Center Drive, Suite 245 Oroville, CA 95965	District Attorney, Marin County 3501 Civic Center Drive, Room 130 San Rafael, CA 94903	District Attorney, San Mateo County 400 County Ctr., 3rd Floor Redwood City, CA 94063	San Jose City Attorney's Office 200 East Santa Clara Street, 16th Floor San Jose, CA 95113
District Attorney, Calaveras County 891 Mountain Ranch Road San Andreas, CA 95249	District Attorney, Mariposa County Post Office Box 730 Mariposa, CA 95338	District Attorney, Santa Barbara County 1112 Santa Barbara Street Santa Barbara, CA 93101	
District Attorney, Colusa County 346 Fifth Street Suite 101 Colusa, CA 95932	District Attorney, Mendocino County Post Office Box 1000 Ukiah, CA 95482	District Attorney, Santa Cruz County 701 Ocean Street, Room 200 Santa Cruz, CA 95060	
District Attorney, Del Norte County 450 H Street, Room 171 Crescent City, CA 95531	District Attorney, Merced County 550 W. Main Street Merced, CA 95340	District Attorney, Shasta County 1355 West Street Redding, CA 96001	
District Attorney, El Dorado County 515 Main Street Placerville, CA 95667	District Attorney, Modoc County 204 S Court Street, Room 202 Alturas, CA 96101-4020	District Attorney, Sierra County PO Box 457 Downieville, CA 95936	
District Attorney, Fresno County 2220 Tulare Street, Suite 1000 Fresno, CA 93721	District Attorney, Mono County Post Office Box 617 Bridgeport, CA 93517	District Attorney, Siskiyou County Post Office Box 986 Yreka, CA 96097	
District Attorney, Glenn County Post Office Box 430 Willows, CA 95988	District Attorney, Nevada County 201 Commercial Street Nevada City, CA 95959	District Attorney, Solano County 675 Texas Street, Ste 4500 Fairfield, CA 94533	
District Attorney, Humboldt County 825 5th Street 4 <sup>th</sup> Floor Eureka, CA 95501	District Attorney, Orange County 401 West Civic Center Drive Santa Ana, CA 92701	District Attorney, Stanislaus County 832 12th Street, Ste 300 Modesto, CA 95354	
District Attorney, Imperial County 940 West Main Street, Ste 102 El Centro, CA 92243	District Attorney, Placer County 10810 Justice Center Drive, Ste 240 Roseville, CA 95678	District Attorney, Sutter County 446 Second Street Yuba City, CA 95991	
District Attorney, Inyo County 230 W. Line Street Bishop, CA 93514	District Attorney, Plumas County 520 Main Street, Room 404 Quincy, CA 95971	District Attorney, Tehama County Post Office Box 519 Red Bluff, CA 96080	
District Attorney, Kern County 1215 Truxtun Avenue Bakersfield, CA 93301	District Attorney, San Benito County 419 Fourth Street, 2nd Floor Hollister, CA 95023	District Attorney, Trinity County Post Office Box 310 Weaverville, CA 96093	
District Attorney, Kings County 1400 West Lacey Boulevard Hanford, CA 93230	District Attorney, San Bernardino County 316 N. Mountain View Avenue San Bernardino, CA 92415-0004	District Attorney, Tuolumne County 423 N. Washington Street Sonoma, CA 95370	
		District Attorney, Yuba County 215 Fifth Street, Suite 152 Marysville, CA 95901	

**GEORGE E MCDONALD HALL OF JUSTICE**

Case # RG15-825174 Case Name Environmental Research V Omega Protein

**DECLARATION OF SERVICE BY MAIL (C.C.P. 1013A (1), 2015.5)**

My business address is 2233 Shoreline Drive, Alameda, California 94501. I am, and was at the time the herein mentioned mailing took place, a citizen of the United States, employed in the County where said mailing occurred, over the age of eighteen years and not a party to the above entitled cause.

On November 15, 2016 I served the foregoing document by depositing a copy thereof, enclosed in a separate, sealed envelope, with the postage thereon fully prepaid, in the United States mail box at Alameda, County of Alameda, California, each of which envelopes was addressed respectively as follows:

William F. Wraith  
Wraith Law  
24422 Avenida de la Carlota, Ste. 400  
Laguna Hills, CA 92653

Trenton Norris  
Arnold & Porter LLP  
3 Embarcadero Center, 10<sup>th</sup> Floor  
San Francisco, CA 94111

I declare under penalty of perjury that the foregoing is true and correct.

Executed on November 15, 2016, at Alameda, California.

  
\_\_\_\_\_  
(Signature of Declarant)

1 **DECLARATION OF SERVICE**

2 I, William F. Wraith, am an active member of the State Bar of California and not a party  
3 to this action. I am a resident or employed in the county where the mailing took place. My  
4 business address is 24422 Avenida de la Carlota, Suite 400, Laguna Hills, CA 92653.

5 On November 15, 2016, I served the foregoing documents described as:

6 **NOTICE OF ENTRY OF JUDGMENT**

7 on the following interested party in this action in the manner identified below:

8 Trenton H. Norris, Esq.

9 Sarah Esmaili, Esq.

10 ARNOLD & PORTER LLP

11 Three Embarcadero Center, 10th Floor

12 San Francisco, California 94111-4024

13 Telephone: (415) 471-3100

14 Facsimile: (415) 415-3400

15 sarah.esmaili@aporter.com

16 trent.norris@aporter.com

17 Attorneys for Defendants Omega Protein Corporation and Wisconsin Specialty Protein, LLC

18 [X] **BY EMAIL OR ELECTRONIC TRANSMISSION:** I caused the documents to be sent  
19 to the persons at the e-mail addresses. I did not receive, within a reasonable time after  
20 the transmission, any electronic message or other indication that the transmission was  
21 unsuccessful.

22 [X] **BY MAIL – COLLECTION:** I placed the envelope for collection and mailing  
23 following this business’s ordinary business practices. I am readily familiar with this  
24 business’s practice for collecting and processing correspondence for mailing. On the  
25 same day that correspondence is placed for collection and mailing, it is deposited in the  
26 ordinary course of business with the United States Postal Service in a sealed envelope  
27 with postage fully prepaid.

28 California Dept. of Justice, Office of the Attorney General  
Proposition 65 Enforcement Reporting  
Attention: Prop 65 Coordinator  
1515 Clay Street, Suite 2000  
Post Office Box 70550  
Oakland, California 94612-0550

[X] **BY MAIL – COLLECTION:** I placed the envelope for collection and mailing  
following this business’s ordinary business practices. I am readily familiar with this  
business’s practice for collecting and processing correspondence for mailing. On the  
same day that correspondence is placed for collection and mailing, it is deposited in the  
ordinary course of business with the United States Postal Service in a sealed envelope  
with postage fully prepaid.

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I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on November 15, 2016 at Laguna Hills, California.



\_\_\_\_\_  
William F. Wraith

**WRAITH LAW**  
24422 Avenida de la Carlota, Suite 400  
Laguna Hills, California 92653  
(949) 452-1234